

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1605 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DEVENDRA KARUNESH SHUKLA

Versus

JANTA CONSTRUCTION CO.

Appearance:

MR VC DESAI for Petitioner
MR SR DIVETIA for Respondent No. 1
RULE SERVED for Respondent No. 2
RULE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2000

C.A.V. JUDGEMENT

1. This is a revision under Section 115 of the Code of Civil Procedure, 1908, filed by the petitioner against the judgment and order recorded by the learned Judge of the Small Causes Court at Ahmedabad on 31st August, 1999, below application Exh.153 submitted by the present respondents directing the petitioner to pay an amount of Rs.14,630/- towards the stamp duty and penalty on the

document produced at Mark 142/1 and further directing that the said document shall not be exhibited for want of its registration under the provisions of Indian Registration Act.

2. It appears that the aforesaid document which is placed on the record of this Court at Annexure `A' is a deed of assignment. The trial court found that the document has been duly proved but the trial court also found that since the document required compulsory registration and since it has not been registered, the said document cannot be exhibited, therefore, the aforesaid order came to be passed by the learned Judge of the Small Causes Court. By the said order, the learned Judge directed that the document produced at Mark 142/1 i.e. deed of assignment be not exhibited for want of its registration under the Indian Registration Act. The trial court further directed that the present petitioner should pay and affix the stamps of Rs.14,630/- on the document produced at Mark 142/1 on or before 20.09.1999.

3. So far second part of the prayer is concerned, the matter is not in dispute before me. I am told that the petitioner has already paid up the stamp duty and penalty in accordance with the order of the trial court. The controversy before me is with respect to non exhibition of the document in question for want of its registration.

4. Learned advocate for the petitioner has strenuously argued before me that, the learned trial Judge has committed serious illegality in holding that the document shall not be exhibited. The learned advocate for the petitioner has taken me through the order of the learned Judge. In paragraph 4 of the said order, the learned Judge makes it clear that the document in question has been held to have been duly proved by the defence side and observed that so far the execution of the alleged deed of assignment produced at Mark 142/1 is concerned, it has been proved by the defence side by examining witness Dinesh Vasanrav at Exh.158. The witness has stated that the alleged document bears his signature and signatures of his father and his aunt. That, considering the evidence of the defence side, the learned trial Judge has held that the alleged document has been proved.

5. So far proof of the document is concerned, the learned trial Judge has positively recorded his statement that the document has been duly proved. Even before me there is no controversy with respect to this finding of

the learned trial Judge. The learned advocate for the respondents has not argued before me that the said finding is wrong and the present petitioner has actually not proved the said document before the learned trial Judge. Therefore I take it that there is no serious dispute between the parties about the fact that the document has been duly proved by the petitioner before the trial court. The question is whether it requires compulsory registration. There is no serious dispute that if the assignment of a right in immovable property is for a value exceeding Rs.100/- then the document is required to be registered compulsorily. The question is whether in the present case the subject matter exceeded the value of Rs.100/-. The relevant part of the document has been referred in para 6 of the order of the trial court and it can be reproduced for ready reference as follows:

"And whereas incidentally to the Assignment of the Assignor aforesaid business and goodwill, goods, stocks in trade, furnitures and fixture, fitting, articles and things it is necessary to assign to the assignees the tenancy right of the said shop premises situated at Nr. Balahanuman Mandir, Gandhi Road, Ahmedabad."

"And whereas in consideration of the assignees having agreed to pay the rent in respect of the said business premises, where the said business is carried on and to observe and perform all the terms and conditions of tenancy in respect of the said Shop premises in the manner hereinafter appearing the assignor herein has agreed to assign and transfer into the assignees his rights title and interest in the tenancy of the said business for which no consideration is paid in cash."

6. The aforesaid contract between the parties makes it very clear that whatever part of it was carrying some consideration, there was specific mention regarding the same in the document in question. However, when the remaining part of the document is read, then it becomes very clear that the parties have agreed that there shall not be any consideration with respect to the said part of the contract. The aforesaid agreement itself makes it clear that the assignor has agreed to assign and transfer to assignee his right, title and interest in the tenancy of the said business for which no consideration is paid in cash. This makes it clear that so far tenancy rights are concerned, they are transferred without any amount of

consideration. The learned trial Judge has held that the tenancy rights have been transferred in a sum exceeding Rs.100/-. This is clearly in contradiction to what has been said in the agreement itself. When the agreement shows that right, title and interest in the tenancy have been transferred without consideration, then it is not gathered from the order of the trial court as to how the learned trial Judge could record his finding that the tenancy rights exceeded the value of Rs.100/-. We are not concerned with the value of the tenancy right but we are concerned with the value on which tenancy rights have been transferred. For doing so, we have to revert back to the agreement itself and the document makes it clear that the tenancy right have been transferred without any consideration.

7. The learned trial Judge has observed that, it is true that no consideration is to be paid as per the document but it does not mean the alleged tenancy right did not have its value. It may be stated that the trial court was not concerned with the value of the tenancy right but the trial court was concerned with the value at which the tenancy rights were agreed to be transferred. If the document shows that the tenancy rights were transferred without any consideration then the trial Judge could not add to the agreement that the tenancy rights were transferred on consideration. Therefore the said finding of the learned trial Judge is against the weight of the evidence being the contents of the agreement in question.

8. On the other hand, learned advocate Mr.Divetia appearing for the respondents has strenuously argued that, the value of the tenancy right is really exceeding Rs.100/-. We are not concerned with the actual value of the tenancy right. We are concerned with the value of the tenancy right at which they were transferred and the document speaks that the rights were transferred without any consideration. I am not shown any law under which the tenancy right could not be transferred without any consideration. It has not been submitted that the transfer without consideration is illegal.

9. Reliance has also been placed on a decision reported in The Bombay Law Reporter Vol. XL page 292 (The Secretary of State Vs. The Kuchwar Lime & Stone Co.Ltd. There it has been observed that the agreement did amount to a transfer of an interest in the leasehold property; and, assuming the interest transferred to be worth more than Rs.100/- the agreement was void for want of registration and accordingly ineffective. The

decision will not apply to the facts before us inasmuch as there is positive averment in the document itself that the tenancy right was transferred without any consideration.

10. Learned advocate for the petitioner has referred to a decision of Civil Revision Application No.183 of 1951 in the case of Mahomedbhoy I.M.Rowjee vs. Moghul Abdulla Vahad Mahomed dated 17th April, 1952. The learned advocate for the petitioner has submitted xerox copy of the said judgment. An efforts were made to obtain certified copy of the order but it seems that the matter is very old and therefore the xerox copy was submitted by the learned advocate for consideration. The Hon'ble Chief Justice of the High Court of Bombay (Justice Chagla, as His Lordship then was) has clearly observed in the judgment as follows:

"It is also true that the value of the property assigned cannot necessarily be judged by the consideration paid by the assignee. That is what Sir John Beaumont laid down in Bai Parsan V.Lallubhai, 34 BOM. L.R. 459. In the case before me the consideration mentioned is Rs.10,000/-, but that does not give us any indication of the value of the tenancy right because the consideration of Rs.10,000/- is made up of the consideration for business, goodwill and the tenancy right and the document does not state what is the consideration or the value of each of the three constituent elements which were sold or assigned by the defendant to his assignee. Therefore it would be pure speculation to his assignee. Therefore it would be pure speculation to try and allocate a proper value to the business, the goodwill and the tenancy right which were all assigned at the same time by the defendant to the assignee. Therefore it is not at all as clear as Mr.Bhende would have me believe that the value of the tenancy right is more than Rs.100. After all when a document is challenged as in admissible, the burden of proving that the document requires registration and therefore as it had not been registered it is not admissible in evidence is upon the challenger and therefore it was for the plaintiff to show that the value of the property was over Rs.100 and therefore the document was not admissible in evidence."

11. The aforesaid judgment also makes it clear that

the concerned parties had to show that the value of tenancy right transferred exceeded to amount of Rs.100/-. The said transfer would not be invalid or illegal as per the arguments advanced by the learned advocate for the petitioner. For the said purpose he has referred to and relied upon a notification under proviso to Section 15(1) of the Bombay Rent Act issued by the then State of Bombay. I am not required to decide the legality of the document. However, I simply refer the said notification since it was referred by the learned advocate for the petitioner. So far maintainability of the present revision application is concerned, Oza Trikammbhai Mohanlal vs. Prajapati Mangaldas Shivram reported in 1997 (1) G.L.R. page 426 is a relevant consideration. There it has been laid down that, "Where a document is not admitted in evidence, the case would be covered by the explanation and a revision would lie to the High Court."

12. Any way, there was no evidence before the trial court to held that the value of the tenancy right exceeded the amount of Rs.100/-. Moreover, there was positive averment in the agreement itself that the tenancy right were transferred without any consideration. The trial court could not ignore the said position.

13. Considering the aforesaid position, it is very clear that when the tenancy right agreed to be transferred in on unequivocal terms without any consideration then the trial court could not have held that the tenancy rights were transferred on consideration that exceeded amount of Rs.100/-. So on both the considerations the finding of the trial court is illegal, erroneous and without jurisdiction also.

14. The document is a basis for the defence of the petitioner and non exhibition of the document will seriously prejudice the case of the petitioner before the trial court, it would result into miscarriage of justice. Therefore interference of this Court is required.

15. An attempt was made to argue that the document stands for a total consideration of Rs.15,000/- and this consideration includes the consideration for the transfer of tenancy right. The positive averment in the agreement is quite otherwise as stated hereinabove. It, therefore, cannot be held that the tenancy right has been transferred on a consideration of Rs.100/- or more.

16. In the aforesaid circumstances, I am of the view

that the trial court has committed jurisdictional error in holding that the tenancy rights were transferred on consideration or that the tenancy right exceeded the value of Rs.100/- and, therefore, the document was required to be registered compulsory. The trial court had no reason to record such a finding and therefore there is jurisdictional error on his part in deciding the matter accordingly. Therefore the said order is illegal and without jurisdiction and it has resulted into miscarriage of justice.

17. In aforesaid view of the matter, this Civil Revision Application is required to be allowed and it is accordingly allowed. The order passed by the learned trial Judge directing that the document shall not be exhibited is set aside. The trial court is directed to exhibit the said document since the trial court has held that the document has been proved. After exhibiting the document, the trial court shall proceed ahead with the trial of the suit from the stage it was left.

18. There is no prayer with respect to the second part of the operative part of the order of the trial court and therefore that part of the order of the trial court is not being disturbed.

19. Rule is made absolute to the aforesaid extent. However, considering the facts and circumstances of the case and considering the technicality of the provisions of law, there shall be no order as to costs so far this revision is concerned.

(D.P. Buch, J.)

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